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8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4162

13 **HAO VAN PHAN**  
9816 Howland Drive  
14 Temple City, CA 91780

**A C C U S A T I O N**

15 **Pharmacy Technician License No. TCH 86000**

16 Respondent.

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18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).  
23 2. On or about August 29, 2008, the Board issued Pharmacy Technician License No.  
24 TCH 86000 to Hao Van Phan (Respondent). The Pharmacy Technician License was in full force  
25 and effect at all times relevant to the charges brought herein and will expire on March 31, 2012,  
26 unless renewed.

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1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
5 of this provision. The board may take action when the time for appeal has elapsed, or the  
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
10 indictment. . . ."

#### 11 **REGULATORY PROVISION**

12 8. California Code of Regulations, title 16, section 1770, states:

13 "For the purpose of denial, suspension, or revocation of a personal or facility license  
14 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
15 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
16 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
17 licensee or registrant to perform the functions authorized by his license or registration in a manner  
18 consistent with the public health, safety, or welfare."

#### 19 **COST RECOVERY**

20 9. Section 125.3 provides that the Board may request the administrative law judge to  
21 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
22 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### 23 **CONTROLLED SUBSTANCE**

24 10. Methylenedioxymethamphetamine (MDMA), having the street name of "Ecstasy," is  
25 a Schedule I controlled substance as defined in Health and Safety Code sections 11054,  
26 subdivision (d), and 11401. Schedule I substances have a high potential for abuse and have no  
27 currently accepted medical use in treatment in the United States.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 11. Respondent has subjected his license to disciplinary action under sections 490, 4300  
4 and 4301, subdivision (l), in conjunction with California Code of regulations, title 16, section  
5 1770, on the grounds of unprofessional conduct, in that Respondent was convicted of a crime  
6 substantially related to the qualifications, functions or duties of a licensee which to a substantial  
7 degree evidences his present or potential unfitness to perform the functions authorized by his  
8 license in a manner consistent with the public health, safety, or welfare, as follows:

9 a. On or about August 25, 2010, after pleading nolo contendere, Respondent was  
10 convicted of one misdemeanor count of violating Penal Code section 653k [possess switch-blade  
11 in motor vehicle] in the criminal proceeding entitled *The People of the State of California v. Hao*  
12 *Van Phan* (Super. Ct. Los Angeles County, 2010, No. 0RI00177). The Court placed Respondent  
13 on 24 months of probation.

14 b. The circumstances underlying the conviction are that on or about December 30, 2009,  
15 Respondent admitted to possessing and carrying a gravity knife (butterfly), switchblade knife in  
16 the center consul of his vehicle.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Unlawful Possession of a Controlled Substance)**

19 12. Respondent has subjected his license to disciplinary action under section 4301,  
20 subdivision (j), on the grounds of unprofessional conduct, in that Respondent violated Health and  
21 Safety Code sections 11377, subdivision (a), by possessing a controlled substance, MDMA  
22 (Ecstasy). On or about July 9, 2010, a deputy from the Los Angeles Sheriff Department found  
23 Respondent to be in possession of one blue Ecstasy pill.

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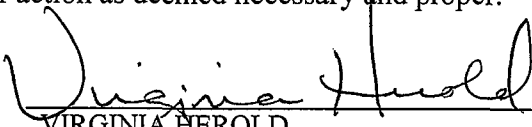
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Pharmacy Technician License No. TCH 86000, issued to Hao Van Phan;
2. Ordering Hao Van Phan to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/19/12

  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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